STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

MARY HAMMONDS; RAYA SOLEIL; and ROSS SOLEIL, individually and on behalf of other similarly situated individuals,

Plaintiffs,

v.

HARTFORD INSURANCE COMPANY OF THE MIDWEST; and PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD,

Defendants.

No. D-202-CV-2023-08611

PLAINTIFFS' UNOPPOSED MOTION FOR ORDER (1) PRELIMINARILY APPROVING CLASS SETTLEMENT, (2) CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY, (3) APPROVING NOTICE TO CLASS MEMBERS, (4) ESTABLISHING OPT OUT AND OBJECTION PROCEDURES, (5) APPOINTING A CLASS ADMINISTRATOR, AND (6) SETTING A FINAL HEARING DATE TO CONSIDER FINAL APPROVAL OF THE CLASS SETTLEMENT, ATTORNEYS' FEES AND EXPENSES

The parties have reached a settlement in this lawsuit. The proposed Class Action Settlement Agreement provides substantial benefits for the class, including payment for re-adjustment and adjustment of UIM claims or return of premiums, notice to the class and administration of claims, valued at $1,906,348.00. Pursuant to Rule 1-023(G) NMRA, Class Plaintiffs, through counsel, move the Court for an Order approving the settlement agreement on a preliminary basis, certifying a class for settlement purposes only, and entry of an order directing the issuance of notice and schedule a fairness hearing. The proposed Class Action Settlement Agreement is attached as Exhibit 1, and the proposed Notice of Class Action Settlement is attached as Exhibit B to the Settlement Agreement. Defendant does not oppose this Motion. The parties agree that the proposed Class Action Settlement Agreement is fair, reasonable, adequate, and

worthy of preliminary approval.

I. Statement of the Case

Plaintiffs' class claims allege that Defendants' have utilized misleading practices to collect premiums for what numerous New Mexico Courts have found to be "worthless" and "misleading" underinsured motorist (UIM) coverage and denied claims for these ultimately "misleading" UIM benefits, in the face of New Mexico consumers' reasonable expectations.[1,2]

The First Amended Complaint alleges that Defendants market and charge premiums for UIM coverage, advising insureds they are purchasing a level of coverage commensurate with the policy limits they have selected for such coverage. The New Mexico Supreme Court recognized in *Crutcher v. Liberty Mut. Ins. Co.*, 2022-NMSC-001, ¶ 2, 501 P.3d 433 and *Smith v. Interinsurance*

[1] New Mexico law on a consumer's reasonable expectations has been well-established dating back to 1988 with similar motor vehicle insurance coverage cases like *Jimenez, Romero, Rodriguez, Montano, Jordan, Weed Warrior* and now *Crutcher* and *Smith*.

[2] "The Court disagrees with Defendant's argument. Defendant appears to believe that a reasonable expectation inquiry is an inquiry into the subjective expectations of each individual class member. However, a reasonable person standard in the insurance context in New Mexico and the Tenth Circuit is generally an ***objective*** inquiry. *Battishill v. Farmers All. Ins. Co.*, 2006-NMSC-004, ¶ 13, 139 N.M. 24, 27, 127 P.3d 1111, 1114 ("Our interpretation of language within an insurance policy, however, is not based on a subjective view of coverage, but rather "our focus must be upon the objective expectations the language of the policy would create in the mind of a hypothetical reasonable insured who, we assume, will have limited knowledge of insurance law. When the terms used have a common and ordinary meaning, that meaning controls in determining the intent of the parties.") (internal citations and quotation marks omitted); *Hodges v. Life Ins. Co. of N. Am.*, 920 F.3d 669, 680–81 (10th Cir. 2019) ("In interpreting policy language, we use an objective standard, considering the "common and ordinary meaning as a reasonable person in the position of the [plan] participant, not the actual participant, would have understood the words to mean."); *Computer Corner, Inc. v. Fireman's Fund Ins. Co.*, 2002-NMCA-054, ¶ 7, 132 N.M. 264, 266, 46 P.3d 1264, 1266 ("In construing standardized policy language, our focus must be upon the objective expectations the language of the policy would create in the mind of a hypothetical reasonable insured, who, we assume, will have limited knowledge of insurance law."), *citing Rodriguez v. Windsor Ins. Co.*, 118 N.M. 127, 130–31, 879 P.2d 759, 762–63 (1994). Defendant has not identified which element of the claims at issue would require a subjective inquiry. Defendant cites to *Stratton, supra*, but that case interprets an Arizona statute which requires actual reliance." *See Bhasker v. Fin. Indem. Co.*, 2022 WL 860368, at *8 (D.N.M. Mar. 23, 2022).

Exch. of Auto. Club, 2025-NMSC-004, ¶ 14, 563 P.3d 868, 872, that even though the UIM offset is statutorily allowed, with proper disclosures, in New Mexico, insureds may never receive the full amount of such coverage, and in many cases, because of the offset, they receive no underinsured motorist coverage protection at all. *Id*. ("As has been established, a tortfeasor who carries **minimum limits UM/UIM coverage or higher** may never fit the definition of an "underinsured motorist" according to the statute, rendering a policyholder unable to collect UIM insurance.").

On October 21, 2024, the New Mexico Supreme Court held, in *Smith v. AAA*, that insurance companies can be held retroactively liable for the misrepresentations identified in *Crutcher*. Although no New Mexico State or Federal Court has determined how far back an insurance company can be held liable, Plaintiffs contend it is reasonable that an insurance company, armed with the knowledge of the misleading UIM benefits, should have been providing proper disclosures since 1985. Plaintiffs' complaint alleged that Defendants here did not provide proper disclosures to their insureds.

Although several other similarly situated class actions have resolved, there is pending litigation in state court involving a similarly situated defendant. Considering the risks of continued litigation and time for potential class members to receive an award, the outcome of continued litigation in the instant case does not outweigh the benefits afforded to Class Members.

After the *Smith* and *Crutcher* cases were decided by the New Mexico Supreme Court, the parties agreed to mediation with nationally recognized mediator, Michael Ungar. All day mediation was held on April 8, 2025 and although the parties did not resolve the claims on that day, the parties committed several hours and intense negotiations during the next several months to come to a Settlement Agreement.

II. Factual and Procedural Background

Soleil

On August 21, 2018, Ross and Raya Soleil (Ross is the son of Raya) were involved in a motor vehicle crash for which they were not at fault. Ross suffered damages well in excess of $50,000.00. Through counsel, Ross Soleil was able to collect the policy limits of $50,000.00 from the tortfeasor and subsequently made a claim for the amount that appeared on the face of the insurance declarations page, i.e. $50,000.00 in underinsured motorist coverage. Ms. Soleil held a reasonable belief that the insurance policy included coverage that she and her covered insureds would benefit from under this scenario of being injured well in excess of $50,000.00.

Ross Soleil made a claim for UIM benefits that Defendant denied, citing the *Schmick* offset.

The Soleil case was filed in state court as a putative class action on December 29, 2020. Defendants removed it to federal court on May, 24, 2022. The district court stayed the case on February 7, 2023, pending the New Mexico Supreme Court's answer to the certified question of law in *Smith v. Interinsurance Exchange of the Automobile Club, No. S-1-SC-39659*.

Hammonds

On November 18, 2020, Mary Hammonds was involved in a motor vehicle crash for which she was not at fault. Ms. Hammonds suffered undisputed bodily injury damages well in excess of $100,000.00. Through counsel, she was able to collect the policy limits of $50,000.00 from the tortfeasor and subsequently made a claim for the amount that appeared on the face of the insurance declarations page, i.e. $100,000.00 in underinsured motorist coverage. Ms. Hammonds made a claim for UIM benefits in the amount of $50,000.00 that Defendant denied, citing the *Schmick* offset.

The Hammonds complaint had been stayed in state court and was not filed as a putative class action. The parties agreed to include the Hammonds case in settlement negotiations, and therefore that the Soleil case would be dismissed in the federal court and included in an Amended Complaint in the already filed Hammonds case, which was not removable.

III. The Terms of Settlement

The material terms of the parties' Settlement Agreement are as follows.

A. Monetary Relief to Class Members

The Settlement Agreement provides adjustment and re-adjustment of claims where Defendants applied an offset or could have applied an offset to Class Members effectively canceling out underinsured motorist benefits or a 23% return of underinsured motorist coverage premiums, but not both. The Settlement Agreement also requires that Defendants pay for the cost of notice and administration of claims, with an approximate value of $150,000.00. Before negotiating, Plaintiffs determined Class Members' potential damages in this case. Defendants affirmed that the following information is true and accurate:

- There are 34,650 unique Class Members;
- During the Class Period, Class Members provided Defendants with UM/UIM premium payments totaling $4,853,687 and may receive a 23% return of the underinsured motorist coverage premium, or a total of $1,116,348, in underinsured motorist premium.
- During the Class Period, Defendants applied an offset to Class Members who made a claim for underinsured motorist coverage arising out of a car crash and bodily injuries. Plaintiffs identified underinsured motorist offsets taken by Defendants totaling $640,000.00.

Defendants also produced a list reflecting this information and providing information adequate to identify each Class Member's potential individual damages.

Defendants will pay for notice so that Class Members will be notified to make a claim for a 23% return of the total uninsured/underinsured motorist premiums they paid over the course of the class period. Defendants will also pay for notice to Class Members who suffered bodily injuries, during the applicable Class Period, arising from a car crash and had an offset applied to their UM/UIM claim. Those Class Members, if they do not choose to avail themselves of a premium repayment as set forth above, will be entitled to submit a claim for re-adjustment or adjustment for the first time and may be eligible to receive a cash award valued at $25,000.00 up to $100,000.00 depending on the bodily injuries and offset amount applied.

The proposed Class Action Settlement Agreement and the plan of distribution therein provides substantial benefits to class members and is worthy of preliminary approval.

A. Cash Payments to Class Members

i. **Automatic Payments to Eligible Settlement Class Members**. Defendants will affirmatively review the claim notes for all Settlement Class Members who filed a UIM claim during the scope of the Class Period. Where the claim notes indicate that the Settlement Class Member suffered a wrongful death, Defendants will "auto-pay" those Settlement Class Members the full UIM offset that was taken, to the extent any offset was applied. There is one Class Member in this position. Defendants will determine these eligible Settlement Class Members by reviewing Defendants' data and provide a list of eligible Settlement Class Members to the Settlement Administrator for a separate notice, including any requests for information required by law for a person to receive such benefits, including tax

forms. Any separate notice to this eligible Settlement Class Member population will be drafted by and approved by both Parties and the Settlement Administrator. Settlement Class Members eligible for these Automatic Payments shall not be required to submit a claim to receive these benefits.

ii. **Other Payment Options**. Settlement Class Members who are not eligible for Automatic Payments may submit a claim for one of the following two options:

a. Option 1: Defendants will readjust the claims for Settlement Class Members who make a Valid Claim for Option 1 whose UIM coverage benefits under an insurance policy were reduced or denied by Defendant pursuant to a UIM Offset between December 29, 2014 through March 18, 2022 for Defendant Property and Casualty Insurance Company of Hartford and January 1, 2019 through March 18, 2022 for Defendant Hartford Insurance Company of the Midwest. Readjusted payments will be equal to an amount of up to the amount of any UIM Offset taken, subject to applicable UIM bodily injury limits.

b. Option 2: Defendants will make a payment to all Defendants' insureds who make a Valid Claim for Option 2 and who purchased UM/UIM coverage on an insurance policy between December 29, 2014 through March 18, 2022 for Defendant Property and Casualty Insurance Company of Hartford and January 1, 2019 through March 18, 2022 for Defendant Hartford Insurance Company of the Midwest. The payment will equal twenty-three (23) percent of the total premium paid by the Settlement Class Member for UM/UIM coverage. If a claimant chooses this Option, they may not avail themselves of the reevaluation option and vice versa.

iii. All Settlement Class Members who submit a Valid Claim, as approved through the Notice Program described in Section V of the Settlement Agreement, shall be eligible to receive Settlement Class Payments under one of the two options described above. If a Settlement Class Member erroneously submits a claim for both Options 1 and 2, they will be prompted by the Administrator to correct this error by choosing only one of these options.

Plaintiffs submit that this Settlement Agreement constitutes a significant recovery for the Class, and that the method of distribution is fair, reasonable, and equitable given the risks of ongoing litigation. Class Members will be notified of Plaintiffs' proposed approach to distributing the Settlement Awards and will have the opportunity to opt out or object in the event that they do not agree. *See* Exhibit 1-B.

B. Release of Claims Against Defendants

In exchange for this consideration, Defendants will receive a release of all claims against them, as set forth in the Settlement Agreement.

C. Right to Opt Out or Object

Plaintiffs' proposed Notice explains Class Members' right to opt out of this case entirely, or in the alternative to object to the proposed Settlement Agreement. *See* Exhibit 1-B. Plaintiff requests that Class Members who wish to opt out or object be ordered to do so in writing, postmarked no later than 30 days prior to the Final Approval Hearing date set by this Court..

IV. Proposed Attorneys' Fees, Costs, and Service Award to Class Representative

Prior to the final approval hearing, Class Counsel will submit a request for approval of payment from the Settlement Amount of attorneys' fees, costs, and service award to Plaintiffs. Plaintiffs' proposed Notice, *see* Exhibit 1-B, notifies Class Members of these proposed amounts

and gives them an opportunity to object. Plaintiff requests that the Court grant preliminary approval to an award of attorneys' fees in the amount of $617,500. This amount is inclusive of gross receipts tax and is based off of the data voluntarily provided by Defendants at mediation. Because Class Members have an option of having 23% premiums returned or having their UIM claim re-adjusted or adjusted for the first time dating back to December 29, 2014 through March 18, 2022 for Defendant Property and Casualty Insurance Company of Hartford and January 1, 2019 through March 18, 2022 for Defendant Hartford Insurance Company of the Midwest, the benefits conferred onto the class are valued at $1,906,348.00. This also includes the estimated cost to provide notice to Class Members and to administer Class Claims, which is approximately $150,000.00 for a class that consists of 34,650 unique Class Members. Thus, the attorneys' fees (New Mexico gross receipts tax, inclusive) and reimbursed costs requested represents 32.3% of the Settlement Class benefits.

Class Counsel also will apply to the Court for a $10,000 service award for all three Plaintiffs. Plaintiffs actively participated in the litigation, including reviewing pleadings, extensive contact with Class Counsel, appearance at a settlement mediation, and close involvement in the settlement process. Without their efforts, there would be no recovery for the Class. It should be noted that none of the above fee issues were raised or negotiated until all material terms of the Settlement between the parties had been agreed on.

V. The Settlement Class Should be Certified because the Requirements of Rule 1-023 are met.

A. Standard for Preliminary Approval of Class Action Settlements.

Certification of the settlement class and approval of the settlement is appropriate here because all of the relevant requirements under Rule 1-023 are met. New Mexico Rule of Civil Procedure 23(E) requires that a "class action shall not be dismissed or compromised without the

approval of the court and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Rule l-023(E) NMRA. "Approval of a settlement class action is appropriate if the district court concludes that the class meets the requirements of Rule 1-023 and that the settlement would be fair, adequate, and in the best interests of the class." *Rivera-Platte v. First Colony Life Ins. Co.,* 2007-NMCA-158, ¶ 26, 143 N.M. 158 (citing federal standards for class action settlement approvals), *rev'd on other grounds by* 145 N.M. 77, 194 P.3d 108. The Court should certify the class in this case because it meets all of the requirements of Rule l-023(A) and Rule 1-023 (B)(l), and Rule l-023(B)(2) and approve the settlement because it provides the most impactful class wide relief to Plaintiffs and class members, and is therefore fair, adequate, and in the best interests of the class.

B. The requirements of Rule 1-023(A) are met.

Rule 1-023 NMRA is a "remedial procedural device" that is to be interpreted liberally. *See Romero v. Phillip Morris, Inc.,* 2005-NMCA-035, ¶ 6, 137 N.M. 229. In deciding a motion for class certification, the court must "accept as true all well-pled factual allegations from Plaintiffs' complaints." *Davis,* 2009-NMSC-048, ¶ 4. "Class certification is not the appropriate time to decide the merits of the case, because in determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Id* (internal quotation marks, citations, and alterations omitted). With respect to all the factors described below, and as discussed further below, Defendants agree that these factors are met for purposes of settlement. However, Defendants have contended and continue to contend that this case would not have been appropriate for certification of a litigation class, and reserve all their rights to so contend if this Settlement does not eventuate for any reason.

1. Numerosity

Rule l-023(A)(l) requires a finding that "the class is so numerous that joinder of all members is impracticable." The class is defined as all individuals (and their heirs, executors, administrators, successors and assigns) who, during the Class Period, were policyholders or insureds under New Mexico automobile insurance policies issued by Defendants which included UIM coverage. As stated above, the parties have identified 34,650 unique Class Members. In sum, because there are allegedly tens of thousands of class members dispersed across the State of New Mexico, including in rural areas, the numerosity requirement of Rule l-023(A)(l) is satisfied. *See Starko, Inc. v. Presbyterian Health Plan, Inc.,* 2012-NMCA-053, ¶ 106, 276 P.3d 252,281, *rev 'd on other grounds sub nom. Starko, Inc. v. New Mexico Human Servs. Dep't,* 2014- NMSC-033, ¶ 106, 333 P.3d 947 (affirming certification on numerosity grounds where between two and three hundred potential plaintiffs were "widely dispersed across the entire state" and "[i]n the event that certification had been denied, those potential plaintiffs would have been greatly inconvenienced by having to individually join in the litigation, many from remote locations").

2. Commonality

Rule l-023(A)(2) requires a finding that "there are questions of law or fact common to the class." "The commonality requirement of Rule l-023(A)(2) is relatively easily met because it is deemed to require only that a single issue be common to the class." *Berry v. Fed Kemper Life Assur. Co.,* 2004-NMCA-l 16, ¶ 42, 136 N.M. 454 (citations omitted). Plaintiffs allege that Class Members and Plaintiffs' claims depend upon common contentions of fact and law that could be resolved for all through a single proceeding.

However, Defendants contend this case would not be appropriate for certification of a litigation class and reserve the right to challenge certification of a class if the settlement is not

approved. Defendants' agreement that the class should be certified for settlement purposes is not an admission that Defendants agree the class should be certified for any other purpose or with any of the contentions raised by Plaintiff here on the merits and/or to support class certification. For example, Plaintiffs contend that Defendants' written materials describing UIM benefits were uniform for all Class Members. The written content forms the basis for Plaintiffs' and Class Members' misrepresentation claims. When a common representation is made in a contract, whether this representation is lawful under the relevant consumer protection laws is a common question. *See United Nuclear Corp. v. Allstate Ins. Co.*, 2012-NMSC-032, ¶ 10, 285 P.3d 644 (explaining: "Insurance policies almost always are contracts of adhesion, meaning that the insurance company controls the language and the insured has no bargaining power.") (quotation marks omitted). *See Crutcher*, 2010-NMSC-051, ¶ 29 citing *Computer Corner, Inc. v. Fireman's Fund Ins. Co.*, 2002-NMCA-054, ¶ 7, 132 N.M. 264 ("In construing standardized policy language, our focus must be upon the objective expectations the language of the policy would create in the mind of a hypothetical reasonable insured, who, we assume, will have limited knowledge of insurance law."); *Jordan*, 2010-NMSC-051, ¶ 13. *See also Montano*, 2004-NMSC-020, ¶ 13, ("…when we speak of the insured's reasonable expectations we refer to what the hypothetical reasonable insured would glean from the wording of the policy and the kind of insurance at issue, rather than how the particular insured who happens to buy the policy might understand it.").

3. Typicality

Rule 1-023(A)(3) requires a finding that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." For typicality, "[t]he fit need not be perfect." *Berry,* 2004-NMCA-l16, ¶ 43. "[D]iffering fact situations of class members do not defeat typicality ... so long as the claims of the class representative and class members are based on the

same legal or remedial theory." *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1216 (10th Cir. 2014) (quotations omitted); *Menocal v. GEO Group, Inc.*, 882 F.3d 905, 914 (10th Cir. 2018).

Class Plaintiffs allege that they seek lost benefits and premiums damages for themselves and on behalf of Class Members as a result of Defendants' violations of its common law, statutory, and contractual duties. Plaintiffs contend that the class was subject to the same conduct and disclosures. Plaintiff further alleges that the relief she seeks for herself and on behalf of others similarly situated are based on the same evidence and legal theories and any differences between Plaintiffs and other purchasers of insurance allegedly harmed by Defendants' conduct are minimal. Plaintiffs also allege the claims arise from the same nucleus of facts relating to Defendants' misrepresentations, pertain to common defendants, and are based on the same legal theories. Because "the alleged unlawful conduct affect[ed] both the named plaintiff[s] and the class members," the typicality requirement of Rule l-023(A)(3) is satisfied. *See Berry,* 2004-NMCA-l16, ¶ 43.

4. Adequacy of Representation

Rule l-023(A)(4) requires a finding that "the representative parties will fairly and adequately protect the interests of the class." Plaintiffs are represented by Corbin Hildebrandt, Esq. (Corbin Hildebrandt, P.C.), Geoffrey Romero, Esq. (Romero Harada & Winters), Andrea Harris (VALLE, O'CLEIREACHAIN, ZAMORA & HARRIS P.C.) and Kedar Bhasker, Esq (Law Office of Kedar Bhasker, LLC.) All attorneys have extensive experience litigating negligence, UPA, UIPA, and breach of contract cases and have brought liberal joinder and class actions, including class actions under the UPA, in both this Court and state courts. Plaintiffs' counsel litigated the issues in the seminal *Crutcher* and *Smith* cases where the New Mexico Supreme Court provided

an answer to a certified questions of law from the United States District Court for the District of New Mexico. *Crutcher v. Liberty Mut. Ins*. Co., 501 P.3d 433. Plaintiffs further allege that they are adequate class representatives and there is no reason to find otherwise.

C. The Class Meets the Requirements of Rule 23(b)(3).

1. Predominance

Plaintiffs assert that common questions such as whether defendants provided the necessary written disclosures that these policies were illusory, predominate over any other individualized issue here. Rule 23(b)(3)'s first requirement is that questions common to the class predominate over those that are individualized. See Rule 1-023(B)(3), NMRA. "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amgen, Inc.,* 568 U.S. at 459 ("Rule 23(b)(3) requires a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class."). The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amgen Inc.*, 568 U.S. at 459 ("Rule 23(b)(3) requires a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.").

An individual question is one where "members of a proposed class will need to present evidence that varies from member to member," while a common question is one where "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045, 194 L. Ed. 2d 124 (2016) (*citing* 2 Rubenstein, Newberg on Class Actions § 4:50, pp. 196–197 (5th ed. 2012) (internal quotation marks omitted)).

If the liability issues are common to the class, common questions will generally

predominate. Cases dealing with the legality of standardized documents or conduct are generally appropriate for resolution by class action because the document or conduct is the focal point of the analysis. *See Naylor Farms, Inc.*, 923 F.3d at 795 (10th Cir. 2019)(class certification is appropriate in case involving oil and gas leases with similar provisions); *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108 (2nd Cir. 2013) *cert. denied sub nom. US Foods, Inc. v. Catholic Healthcare West*, 134 S. Ct. 1938, 188 L. Ed. 2d 960 (2014) (Predominance will be found in the absence of material differences in contract language); *Hanks v. Lincoln Life & Annuity Co. of New York*, 330 F.R.D. 374, 382 (S.D.N.Y 2019) (The contract language at issue does not vary by individual class member and is not materially different across the eighteen policies…Therefore, adjudication of the question of breach "will focus predominantly on common evidence ...."). Here, Plaintiffs allege there are no individual questions relating to liability and the damages are standardized across the class. Most importantly, Plaintiffs allege the Class' claims are susceptible to generalized proof because they all rest on contracts that were the same or virtually the same for every class member. Those contracts promised UIM coverage. For that reason, Plaintiffs contend the legal issues concerning the violations of New Mexico law predominate over any other possible issues.

2. Superiority

Plaintiffs also assert that the class action format is a superior method for resolving this dispute. For most members, maintaining an individual suit is not worthwhile. The fundamental purpose of the money damages class action is to vindicate consumer's rights in cases like this.

In addressing whether a proposed class action is superior to other available methods of adjudicating the controversy, courts start with the four factors that rule 23(b)(3)(A)-(D) enumerates:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3)(A)-(D); *Daye v. Cmty. Fin. Serv. Centers, LLC*, 313 F.R.D. 147, 165 (D.N.M. 2016).

Plaintiffs contend and have learned from their other similar cases that most Class Members likely do not know they even have claims against Defendants. It is likely that most Class Members have never heard of the "*Schmick* offset," are unfamiliar with the legal workings of UIM insurance, and do not realize how their reduced recovery in a personal injury scenario may have deprived them of their first layer of their offset UIM coverage. Accordingly, most would not bring their own actions. Even if they were aware of their potential claims, the cost of individual litigation would in nearly all cases eclipse their potential recovery.

All the requirements of Rule 23(b)(3) are met for settlement purposes. There are common questions of law and fact that predominate over any questions affecting only individual class members and the class action is superior to any other available methods for adjudicating this controversy.

IV. The Settlement Should Be Preliminarily Approved as Fair, Reasonable and Adequate.

Review and approval of a proposed class action settlement involves two stages: preliminary approval and final approval. In the preliminary approval stage, class counsel submits the proposed terms of settlement to the court, which makes a preliminary fairness evaluation. Rule 1-023(E)

NMRA. "At the preliminary approval stage, the Court makes a preliminary evaluation of the fairness of the proposed settlement and determines whether it has any reason to not notify class members of the proposed settlement." *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2012 WL 394392, at *22 (D.N.M. Jan. 24, 2012). "There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for Court approval." H. Newberg, A. Conte, *Newberg on Class Actions* (4th ed. 2002), §11.41. The Tenth Circuit has utilized a four-factor test for assessing whether a proposed settlement is fair, reasonable, and adequate, which includes: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Jones v. Nuclear Pharmacy, Inc*., 741 F.2d 322 (10th Cir.1984).

If preliminary approval is granted, notice is provided to the Class Members and a final fairness hearing is scheduled. Rule 1-023(E). At the final fairness hearing, the Court considers any objections from class members. *See, e.g*., *Platte v. First Colony Life Ins. Co*., 2008-NMSC-058, 145 N.M. 77.

Here, the Settlement Agreement presented to the Court for preliminary approval represents a fair and reasonable resolution of this dispute and is worthy of notice to and consideration by the Class Members. It will provide financial and other relief to Class Members and will relieve Defendants of the burden of litigation. The Settlement Agreement was reached by arm's-length bargaining, conducted following detailed investigation into Class Members' claims. The parties reached settlement based on the risks and expense involved in pursuing the

litigation to conclusion, the protracted nature of the litigation, and the likelihood, costs and possible outcomes of additional procedural and substantive disputes. Based on this review and analysis, Plaintiffs believe that settlement is in the best interests of the Class, particularly since Defendants have asserted that they have many viable defenses both to the merits and class certification, and indicated they were committed to pursuing these through all possible legal channels had settlement of this matter not eventuated.

V. The Proposed Notice to Class Members Is Adequate.

Under Rule 1-023(C)(2) and (E), Class Members are entitled to notice of certification and of any proposed settlement, and an opportunity to opt out or object before it is finally approved by the Court. The Notice proposed by Plaintiffs is clear and straightforward, providing Class Members with enough information to evaluate whether to opt out of this case or to object to the settlement, as well as directions on how to seek further information.

Plaintiffs plan to use an experienced administrator, Epiq Systems, Inc., to manage the proposed notice. The proposed Notice of Class Action Settlement will be sent by mail and email to addresses obtained from Defendants' records. Notice shall be sent both by first class mail to those Settlement Class Members' last known address, and email to the extent available in Defendants' records. The last known address shall be determined from information reasonably available in Defendants' files, which will be run through the United States Postal Service's national change of address database prior to mailing by the Settlement Administrator.

VI. Scheduling Matters

Should the Court grant preliminary approval, the parties request that the final approval hearing be set for a date approximately 120 days after preliminary approval. The Court should allow Plaintiff 45 days to mail notice. Class Members should be allowed until 30 days prior to the

final approval hearing to opt out or object. This will allow sufficient time for the parties to mail and email the Notice to Class Members and for Class Members to object or to opt out, if desired.

VII. Conclusion

The proposed Settlement Agreement is fair, reasonable, and adequate. Wherefore, Plaintiffs request that the Court:

1. Certify the Class for purposes of settlement;
2. Appoint Plaintiffs as Class Representatives;
3. Appoint Plaintiffs' counsel as Class Counsel;
4. Grant preliminary approval of the Settlement Agreement;
5. Direct that proposed Notice be provided to Class Members;
6. Set deadlines and other requirements for Class Members to object or opt-out; and
7. Set a final fairness hearing.

A copy of the Claim Form, substantially in the form attached hereto as Exhibit 1-A, will be available on the Settlement Website identified in the Class Notice and can be requested to be received in the mail from the Settlement Administrator.

III. Conclusion and Relief Requested

Plaintiffs respectfully request that the Court preliminarily approve the Class Action Settlement Agreement, enter an order, in the form attached hereto as Exhibit 1-D, directing the issuance of the proposed Notice of Class Action Settlement, and schedule a Final Approval Hearing for a date approximately 120 days after the Order reflected in Exhibit 1-D is entered.

Respectfully Submitted,

By: /s/ *Kedar Bhasker*

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